

EXHIBIT 4

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

CASE NO: CJ-2009-5292

SAM JOHNSON, as Personal Representative
Of the Estate of Martha Bea Johnson, deceased,

Plaintiff,

vs.

ACTAVIS TOTOWA, L.L.C., formerly known as Amide Pharmaceuticals, Inc., MYLAN BERTEK PHARMACEUTICALS, INC., UDL LABORATORIES, INC., WAL-MART, INC., McBRIDE CLINIC ORTHOPEDIC HOSPITAL, INC.,

Defendants.

401 2nd Street East
Indian Rocks
Beach, FL 33785
September 19, 2011
9:15 a.m. to 5:15 p.m.

VIDEOTAPE DEPOSITION OF DAVID BLIESNER, Ph.D.

Taken on behalf of the Defendants before
PHILIP RYAN, RPR, Court Reporter, Notary Public in
and for the State of Florida at Large, pursuant to
Defendants' Notice of Taking Deposition in the
above cause.

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23 ALSO PRESENT:

24 Larry Tambini, videographer
25

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Note: The following were not marked by this court reporter but are included below for ease of reference.

Plaintiff's Exhibit 253, Plaintiff's Exhibit 126, Plaintiff's Exhibit 16, Plaintiff's Exhibit 113, Plaintiff's Exhibit 91, Plaintiff's Exhibit 139 Defendants' Exhibit 92, Defendants' Exhibit 620, Defendants' Exhibit 487.

Documents referred to as M14 and M69.

1 THE VIDEOGRAPHER: My name is Larry
2 Tambini of Veritext. Today is September 19,
3 2011. The time is approximately 9:15 a.m.
4 This deposition is being held at the Holiday
5 Inn located at 401 Second Street East, Indian
6 Rocks Beach. The caption of the case is Sam
7 Johnson, personal rep. of the Estate of Martha
8 B. Johnson versus Actavis Totowa, et al., in
9 the District Court of Oklahoma County. The
10 name of the witness is David Bliesner, Ph.D.

11 At this time will the attorneys please
12 introduce themselves for the record.

13 MR. MILLER: Brad Miller for Plaintiff.

14 MR. ZUCKERMAN: Harold Zuckerman, local
15 counsel for all defendants.

16 MS. DONAHUE: Alicia Donahue, Shook,
17 Hardy & Bacon on behalf of the Mylan
18 defendants and UDL Labs.

19 MR. WAMELINK: Seth Wamelink of Tucker,
20 Ellis & West For the Actavis Defendants.

21 MR. ANDERTON: Michael Anderton from
22 Tucker, Ellis & West for the Actavis
23 Defendants.

24 THE VIDEOGRAPHER: And would the court
25 reporter please swear in the witness?

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Thereupon:

DAVID BLIESNER, Ph.D.,
Was called as a witness and, having been first
duly sworn and responding "I do," was examined and
testified as follows:

DIRECT EXAMINATION
BY MR. ANDERTON:

Q. Good morning, Dr. Bliesner.
A. Good morning, sir.
Q. How are you?
A. Okay.
Q. You remember me, I trust?
A. Yes, sir.
Q. Okay. As I just indicated, I am here on
behalf of the Actavis Defendants. And you've been
deposed at least twice before that I know of --
we're going to ask you whether you've been deposed
in any other circumstance other than those two --
so I know you've been through the process with me
and with other colleagues of mine at least in the
last eight or nine months. But I think it's
always good to kind of refresh and go over some of
the ground rules, if you will, before we start;
okay?

1 A. Yes, sir.

2 Q. All right. So, most importantly -- from
3 my perspective at least -- if you -- if I ask you
4 a question, Dr. Bliesner and for whatever reason
5 you think you'd like me to restate it or rephrase
6 it, if you don't understand my question, if it
7 comes off poorly -- and that will happen from time
8 to time -- or if there's any reason at all you'd
9 like me to ask it again, please let me know that.

10 If you answer -- if I ask a question and you
11 answer it, I will assume that you understood it;
12 okay?

13 A. Yes, sir.

14 Q. I need verbal answers. So -- I know
15 you're pretty good at that. I know last time I
16 examined you about six months ago, seven months
17 ago, there were a couple of times where -- where
18 you forgot and didn't give verbal answers, but
19 that's easy to fix.

20 So you need to remember to respond verbally
21 because the court reporter can't take down nods of
22 the head or shakes of the head; okay?

23 A. I understand.

24 Q. Will you state your name and spell it
25 for this record, please.

1 that.

2 Q. Okay.

3 A. I did see some bits and pieces of
4 methods and stuff, but on the grand scheme of
5 things, no.

6 Q. Okay. Dr. Bliesner, if we can pick up
7 the document marked as Exhibit 620.

8 A. Yes.

9 Q. That is the supplemental declaration
10 that we talked about several hours ago now. Do
11 you remember --

12 A. That is correct.

13 Q. -- our initial conversation about that?

14 A. I do.

15 Q. Okay. That contains sworn testimony
16 that you've given in the MDL; right?

17 A. It does.

18 Q. Does that document also reflect opinions
19 that you intend to testify about in this case?

20 A. This document reflects opinions that
21 I've already expressed in the report.

22 Q. So it's your opinion that that document
23 doesn't enhance or supplement the opinions you've
24 expressed in your report in any way?

25 A. I haven't thought of it in those terms.

1 It was a response to the question that was put by
2 your -- I think it was your organization.

3 Q. I didn't have anything to do with
4 preparation of that declaration. You understand
5 that; right?

6 A. There was a -- I believe it's in the
7 folder. What's it called?

8 Q. It's a motion.

9 A. A motion, yes. And --

10 Q. Well, just tell me what you know about
11 that.

12 A. It was a response to the motion.

13 Q. Okay. How did that document come to be?

14 A. This document came to be?

15 Q. Yeah.

16 A. I received a telephone call from -- was
17 it either Mr. Kilpatrick or Mr. Kerensky --

18 Q. Okay.

19 A. -- saying that there was a -- motion,
20 did you call it?

21 Q. Correct.

22 A. Yes. To come out that needed to be
23 addressed.

24 Q. Okay.

25 A. Uh-huh.

1 Q. So how did we get from that telephone
2 call to that document?

3 A. They sent me the motion.

4 Q. And?

5 A. And had me read it and think about it
6 and then we had a teleconference.

7 Q. Okay.

8 A. And they said, how would you address
9 point, whatever point, whatever point, whatever.

10 Q. Okay. We still don't have a declaration
11 as you've described it. How did we get to
12 actually existing of a document?

13 A. That document was -- with my input, a
14 draft was created by either one of those two to
15 put it in proper legal format, because they
16 realized that I didn't know anything about doing a
17 motion. And it was sent back to me once or twice,
18 I think, and asked to review input, modify, review
19 the depositions to make sure that it matched my
20 input to fit this legal framework.

21 Q. Did you review that document carefully
22 before you signed it?

23 A. I thought at the time that I reviewed it
24 very carefully, but I noticed when I looked at it
25 the other day there's a typo or two.

1 Q. Did you review it carefully for
2 substantive content?

3 A. I did.

4 Q. Have you seen -- by the way -- well, did
5 you discuss this document with Mr. Miller this
6 past weekend?

7 A. Yes.

8 Q. Did he have a copy or did you give him a
9 copy?

10 A. I'm not sure, but I think I gave him a
11 copy.

12 Q. Did you give him a copy before this
13 weekend?

14 A. No.

15 Q. You gave it to him this weekend?

16 A. Uh-huh.

17 Q. Is it your understanding that he had not
18 seen it before that time?

19 A. I believe that he had not seen it before
20 this time.

21 Q. What did you talk about it -- with
22 Mr. Miller, how did you discuss this declaration?

23 A. He took a look at it, pointed out a
24 couple of things -- which I don't recall
25 specifically what they were -- and said looks like

1 the report to me.

2 Q. Okay. Back to my question. Did you
3 review that document carefully for substantive
4 content before you signed it?

5 A. I did review it carefully for
6 substantive content.

7 Q. Have you seen -- you said that you
8 saw --

9 A. And the -- no, I'm sorry.

10 Q. You said that you saw the motion --

11 A. Yes.

12 Q. -- that prompted Plaintiff's counsel in
13 the MDL to ask you to prepare this document.

14 A. Yes.

15 Q. Have you seen what are referred to as
16 the reply briefs that were filed after Plaintiff's
17 in the MDL filed their opposition?

18 A. I'm sorry. I missed that progression of
19 things.

20 Q. Yeah. I'll walk you through it.

21 A. Okay.

22 Q. You got a motion from the Plaintiffs in
23 the MDL, and they said, as you characterized it,
24 take a look at this, tell me how you might respond
25 to some of these things. Is that a fair --

1 A. Respond to all of them, actually.

2 Q. Okay.

3 A. Uh-huh.

4 Q. You understood at that time that the
5 declaration that you're looking at was going to be
6 filed with the court by the Plaintiffs as part of
7 their opposition to the motion?

8 A. I believe I understood that, yes.

9 Q. Okay. And you know that now, right?

10 A. Yes, I do know that now.

11 Q. You know that it has been filed?

12 A. No, I was not completely aware that it's
13 been filed. But it's been filed.

14 Q. But you knew that it was going to be?

15 A. Yes, I did.

16 Q. Okay. And did you know then that the
17 Defendants replied to that opposition?

18 A. The Defendants being?

19 Q. The Actavis and Mylan and the others.

20 A. No.

21 Q. You did not know that?

22 A. I did not know that.

23 Q. Have you discussed any of those replies
24 with Plaintiff's counsel?

25 A. Which replies are we talking about?

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1 Q. Any of the Defendants's replies that
2 they filed with the MDL court.

3 A. Okay. This being filed, then Defendants
4 responded to -- yeah, after, after this was
5 signed --

6 Q. Yes.

7 A. -- I had no more conversations about it.

8 Q. Okay.

9 A. That I know of.

10 Q. You've not spoken -- to the best of your
11 recollection, you've not spoken to the lawyers in
12 the MDL about the affidavit, the motion, the
13 circumstances around the affidavit, since that was
14 filed?

15 A. Since it was filed.

16 Q. Is that right?

17 A. Not spoken to them, no.

18 Q. Okay.

19 A. There may be an e-mail saying thanks,
20 we're done.

21 Q. Okay.

22 A. But other than that, no conversation.

23 Q. I apologize. And to the best of your
24 recollection, you've not seen or reviewed any of
25 the reply briefs prepared and filed by Defendants?

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1 A. As I understand, no.

2 Q. Okay.

3 MR. ANDERTON: Phil, would you mark this,
4 please?

5 (Defendants' Exhibit 496 was marked for
6 identification.)

7 BY MR. ANDERTON:

8 Q. Dr. Bliesner, I'm handing you a document
9 that has been marked as Exhibit 496. Have you
10 seen that document before?

11 A. Yes.

12 Q. It's an e-mail from Mr. Kilpatrick --

13 A. Yes.

14 Q. -- to you and some other folks. Do I
15 read this accurately when I conclude from this
16 that they prepared an initial draft of this
17 declaration, the supplemental declaration, and
18 sent it to you for review and comment?

19 A. Based on the conversation, the
20 teleconference, yes.

21 Q. I understand.

22 A. Yes.

23 Q. But they prepared the initial draft?

24 A. The draft, yes. Put it in the proper
25 format to save time. If I'm not mistaken, this

1 was a very short timeline that was on this, yes.

2 Q. Was -- the date of this e-mail is August
3 22.

4 A. Uh-huh.

5 Q. Was that the day you spoke to them about
6 this? Do you know?

7 A. I don't know.

8 Q. Dr. Bliesner, you are, by training, an
9 analytical chemist?

10 A. I am.

11 Q. Will you take a look at the declaration
12 and turn to page 4?

13 A. Yes.

14 Q. You see that there are bullet points on
15 page 4?

16 A. I do.

17 Q. The fifth bullet point begins, "In
18 January 2008." Do you see that?

19 A. I do.

20 Q. Do you see there that in this bullet
21 point you indicate that in January 28, there was
22 an internal e-mail at Mylan confirming two batches
23 of Digitek out-of-specification assays?

24 A. I see that.

25 Q. Okay. Out of specification is a term

1 with meaning, isn't it?

2 A. It is.

3 Q. It means that the result is not within
4 the approved specification, right?

5 A. That would be correct.

6 Q. Okay. You see in your -- in that bullet
7 point that you refer to Plaintiff's Exhibit M14.
8 I'm handing you that same Exhibit M14. If you'll
9 read that to yourself and let me know when you've
10 read it.

11 A. Carney 70 -- I'm sorry, to myself.
12 Okay.

13 Q. Is this the document you're referring to
14 in that fifth bullet point on page 4?

15 A. I'll look at my report.

16 Q. Please.

17 A. I believe that is.

18 Q. Okay. So -- by the way, in the body of
19 your report, do you mention this situation at all?

20 A. This particular reference?

21 Q. Yeah.

22 A. I don't know.

23 Q. Take your time.

24 A. Can we take a break?

25 Q. Of course.

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1 THE VIDEOGRAPHER: It is 2:37. We're
2 going off the record.

3 (Discussion off the record.)

4 THE VIDEOGRAPHER: This is tape number
5 5. It is 2:45. We are on the record.

6 BY MR. ANDERTON:

7 Q. Dr. Bliesner, before we went off the
8 record, I asked you whether -- whether you refer
9 to the circumstances covered in the fifth bullet
10 point on page 4 of your declaration in the body of
11 your report.

12 A. Okay.

13 Q. You were undertaking that analysis, I
14 believe.

15 A. I do not see it referenced in the body
16 of the report.

17 Q. Okay. So there is a reference to it at
18 page 57 of your report; correct?

19 A. That is correct.

20 Q. And at page 57, you refer to the assay
21 values discussed in Plaintiff's Exhibit M14 as
22 low; right?

23 A. In the report here?

24 Q. Yeah.

25 A. It states I have low assay, right.

1 Q. Okay. And that is consistent with the
2 information in Exhibit M14; right?

3 A. That is correct.

4 Q. The assay -- acceptable USP assay range
5 for this product is 90 to 105 percent?

6 A. 90 to 105 percent.

7 Q. Right. You are aware of that, right?

8 A. I'll take your word for it without
9 looking at it.

10 Q. Okay. 96.2 is within that range, isn't
11 it?

12 A. It is.

13 Q. 97.3 is within that range?

14 A. It is.

15 Q. Turn back to your affidavit, the fifth
16 bullet point on page 4.

17 A. Yes.

18 Q. That says, "Confirms two batches of
19 Digitek tablets with out-of-specification assays."
20 Is that accurate?

21 A. That's an incorrect statement.

22 Q. Okay. So this is sworn testimony?

23 A. It is.

24 Q. That's incorrect?

25 A. Yes. It's an error.

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1 Q. And you're an analytical chemist?

2 A. I am an analytical chemist.

3 Q. Certainly capable of recognizing when an
4 assay value is in or out of specification?

5 A. I'm capable of recognizing that, yes.

6 Q. So when you reviewed this affidavit
7 drafted by Plaintiff's counsel --

8 MR. MILLER: Let's be clear about who
9 you're talking about.

10 MR. ANDERTON: Fair enough. Good point.

11 BY MR. ANDERTON:

12 Q. When you reviewed this affidavit drafted
13 by the Plaintiff's lawyers in the Digitek MDL --

14 MR. MILLER: By the way, you also agreed
15 to call it a declaration, for whatever it's
16 worth.

17 MR. ANDERTON: Good point. Let me try
18 again.

19 MR. MILLER: Come on, see if I can get
20 one more.

21 MR. ANDERTON: Just pull the string.

22 BY MR. ANDERTON:

23 Q. Dr. Bliesner, I want to take this very
24 seriously because I do take it very seriously.

25 A. I understand.

1 Q. When you reviewed the draft declaration,
2 the supplemental declaration, drafted by the
3 Plaintiff's lawyers in the MDL, you obviously
4 didn't catch that, did you?

5 A. I did not catch that, no.

6 Q. If you had seen that and reviewed it
7 carefully, would you have changed it?

8 A. I did review it carefully, but I did not
9 pick that up. And if I'd have seen it, I would
10 have changed it.

11 Q. Okay. So that is --

12 A. That's an incorrect statement.

13 Q. Okay.

14 A. Based on the, the exhibit.

15 Q. And does that maybe shed some light on
16 why you didn't reference it in the body of your
17 report?

18 A. No, I don't think there's any connection
19 to that at all.

20 Q. Well, you were analyzing Actavis's
21 quality systems particularly or specifically with
22 respect to Digitek. This is product in the hands
23 of UDL; right?

24 A. It appears it is product in the hands of
25 UDL.

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1 Q. If you had known that product was in the
2 hands, that's out the door --

3 A. I understand.

4 Q. -- of Actavis --

5 A. I understand.

6 Q. -- you wouldn't have made the mistake of
7 characterizing it as out of specification, and you
8 wouldn't have missed it when you prepared your
9 report if, in fact, it was out of specification,
10 would you have?

11 A. Run that by me again, please.

12 Q. If you had seen out-of-specification
13 product out of Actavis's plant in the hands of
14 UDL, you would have referenced that in the body of
15 the report, wouldn't you?

16 A. I think that's a fair statement, yes.

17 Q. Okay. Does the word "defect" have
18 substantive meaning?

19 A. To who?

20 Q. To you.

21 A. To me?

22 Q. As an analytical chemist?

23 A. Defect? It does.

24 Q. Is defect -- do you use the term defect
25 to mean out of specification?

1 A. It can.

2 Q. Do you use it when something's not out
3 of specification?

4 A. I don't know if I ever have or not.

5 Q. Okay. How long have you been an
6 analytical chemist in this industry?

7 A. Since 1992.

8 Q. Okay. So 19 years?

9 A. Uh-huh.

10 Q. You don't think you've ever used the
11 word defect to refer to something that's not out
12 of specification; am I right?

13 A. Probably not, no.

14 Q. I'm right that you probably have not
15 done that, right? Let's make sure this is clear.
16 I said it poorly. I messed up your answer. I
17 apologize.

18 What I understand you to say is that you don't
19 believe in 19 years of being an analytical chemist
20 in this industry that you have used the word
21 "defect" when referring to something that is not
22 out of specification; is that a correct statement?

23 A. I wouldn't make that broad a statement.

24 Q. Do you remember ever doing that?

25 A. I don't recall anything right now, but

1 it's a broad statement.

2 Q. Okay. Hold on one second.

3 Dr. Bliesner, I'm going go to hand you a
4 document that's marked as Exhibit 253. It's
5 actually Plaintiff's Exhibit 253. This was from
6 the MDL. Can you look at your declaration?

7 A. Yes.

8 Q. And the top of page 4, the first bullet
9 point at the top of page 4, the declaration,
10 Dr. Bliesner?

11 A. Yeah.

12 Q. Do you see that there's a reference in
13 there to PLX 253 in that bullet point?

14 A. Yes.

15 Q. Is that Plaintiff's Exhibit 253?

16 A. It is.

17 Q. Okay. And, again, looking at
18 Plaintiff's Exhibit 253 -- give me one second. Go
19 to the last page of Exhibit 253.

20 A. Yes.

21 Q. Do you see the discussion there at the
22 last substantive paragraph on that page that
23 begins, "All data was reviewed"?

24 A. Could you say that again? I'm sorry.

25 Q. Yeah. Do you see the last substantive

1 paragraph on that page that reads, "All data was
2 reviewed"?

3 A. Uh-huh.

4 Q. Read that sentence -- read the first,
5 I'm sorry, two sentences to yourself. You don't
6 need to read them out loud.

7 A. Okay.

8 Q. You see that that first -- or, I'm
9 sorry, that second sentence refers to Batch 60319?

10 A. Yes.

11 Q. What does it say with respect to that
12 batch?

13 A. I'm sorry. Say that again.

14 Q. Yeah. What does the second sentence say
15 with respect to 60319? It says, "The final blend
16 assay standard deviation was higher than other
17 batches reviewed," right?

18 A. Correct.

19 Q. Is that out of specification?

20 A. I'm not familiar with what the
21 specification was, looking right at this document.

22 Q. Well, if you turn to your report --

23 A. Yes.

24 Q. -- at page 43.

25 A. Yes.

1 Q. You see your reference A27 there?

2 A. I do.

3 Q. You see your discussion of this issue,
4 that standard deviation being higher than other
5 batches?

6 A. I do.

7 Q. Do you characterize that as defective?

8 A. As it's written here, it's just, from
9 what I can see, assay standard deviation is 4.5
10 percent higher than the other batches. That's all
11 the statement means.

12 Q. It's not 4.5 percent higher. It is 4.5
13 percent and it is higher than other batches?

14 A. Okay.

15 Q. So it's not higher by a matter of 4.5
16 percent; correct?

17 A. The standard deviation is 4.5 percent.

18 Q. Which is itself higher than other
19 batches; right?

20 A. That's correct.

21 Q. Okay. You don't say anything there
22 about defect?

23 A. No.

24 Q. And Exhibit 253 doesn't say anything
25 there about defect or out of specification?

1 A. No, Exhibit 253 does not.

2 Q. Okay. Yet in your affidavit -- I'm
3 sorry, in your declaration, the first bullet point
4 on page 4, you refer to that as "blend uniformity
5 defects." Do you see that?

6 A. I do.

7 Q. You didn't draft that, did you?

8 A. What do you mean?

9 Q. That bullet point.

10 A. That bullet point?

11 Q. Yeah.

12 A. The draft was taken out of here and put
13 into the report.

14 Q. You didn't do that?

15 A. That actual bullet point, it was part of
16 the conversation that we had together.

17 Q. Did you tell them that that was
18 defective?

19 A. Did I tell them that what was
20 defective?

21 Q. Plaintiff's lawyers in the MDL that that
22 standard deviation was a blend uniformity defect?

23 A. Not that I recall specifically.

24 Q. But you signed sworn testimony
25 indicating that it was.

1 A. It's an error.

2 Q. Another error.

3 Did you read Dan Bitler's testimony or his
4 deposition before you prepared your report?

5 A. Report, back to the original report?

6 Q. Yes, the original report to your left
7 hand there.

8 A. Uh-huh.

9 Q. Do you recall reading Dan Bitler's
10 deposition testimony before you prepared that
11 report?

12 MR. MILLER: I'm going to have to object
13 to the form because I don't know which time
14 you're talking about he testified.

15 BY MR. ANDERTON:

16 Q. So Mr. Miller makes a good point.
17 Mr. Bitler has been deposed multiple times in
18 connection with various Digitek litigations. Once
19 in the MDL, maybe more than once in the MDL, and
20 once by Mr. Miller himself about a year ago,
21 actually, in this case specifically.

22 Do you remember reading Mr. Bitler's report
23 before you prepared -- reading Mr. Bitler's
24 deposition testimony as he was deposed in the
25 Digitek MDL, before you prepared your report?

1 A. I don't recall that. I would have to go
2 back and look.

3 Q. Say that again.

4 A. I'd have to go back and look
5 specifically.

6 Q. You placed good -- not good, but you
7 placed a fair amount of significance on the notion
8 that Actavis had the same people in positions of
9 leadership for a long period of time; right?

10 A. Yes.

11 Q. And turn to page 19 of your report. You
12 see the paragraph that starts 51 that starts on
13 page 18, you see your discussion there of --

14 A. Excuse me.

15 Q. -- the various individuals and how long
16 they were employed?

17 A. I do.

18 Q. You see that you indicate Mr. Bitler,
19 who was in charge of quality, according to you,
20 was there from 1995 until 2008. Do you see that?

21 A. That's what it says in the report.

22 Q. Okay. I'm going to hand you a document
23 that's been marked as Exhibit 487 and in the
24 interest of brevity, that is the cover page of
25 Mr. Bitler's first MDL deposition, and then an

1 excerpted segment of his transcript.

2 A. Got you.

3 Q. If you can flip through Exhibit 487
4 until you find the page marked 31. And then would
5 you read the last two pages? Let me know when
6 you've completed that.

7 A. Read 31?

8 Q. And then to the end of the exhibit.

9 A. Okay. There's a blank page in here. Is
10 that --

11 Q. Yeah. Yeah.

12 A. All right.

13 Q. Are you done reading that brief
14 passage?

15 A. I have read it, yes.

16 Q. When was Mr. Bitler employed by Actavis,
17 according to his testimony?

18 A. It says here, "Let's go back to your
19 employment period. Can you tell me when you began
20 in April 2004, what was your title?"

21 Q. So he didn't start in 1995, did he?

22 A. I'm not sure when he started based on
23 this statement, employment period, because it
24 talks about buildings and where I was and that
25 kind of stuff. So I can't, from this selected

1 beginning here, tell what the employment period
2 really was.

3 MR. MILLER: Can I ask a question,
4 please?

5 MR. ANDERTON: Sure.

6 MR. MILLER: This is marked 487. Does
7 that mean it's going to be part of this record
8 as Exhibit 487?

9 MR. ANDERTON: Yes. We picked up the
10 number and added it at the end of numbering
11 that we had used previously.

12 MR. MILLER: In this case that you're
13 talking about?

14 MR. ANDERTON: Yes, yes.

15 BY MR. ANDERTON:

16 Q. Dr. Bliesner, I'm going to hand you a
17 document marked Plaintiff's Exhibit 126.

18 A. Okay.

19 Q. Have you seen that document before?

20 A. I'm not sure.

21 Q. Well, in any event, it's Doctor -- we'll
22 chase that down before the end of the day. But do
23 you see that it is a CV of Daniel Bitler?

24 A. I see that, yes.

25 Q. And do you see that it indicates he was

1 employed by Actavis beginning in 2004?

2 A. I see that he was employed by Alpharma
3 in 2003, and which, if I'm not mistaken, became
4 Actavis in 2004.

5 Q. Became Actavis Elizabeth.

6 A. Right. Okay.

7 Q. Not Actavis Totowa. Where was he before
8 2003?

9 A. He was Sanofi-Synthelab.

10 Q. Any connection to Actavis that you've
11 aware of?

12 A. Not that I'm aware of.

13 Q. Before that, Warner Lambert. Any
14 connection to Actavis?

15 A. Not that I'm aware of.

16 Q. That goes back quite a ways. Abbott
17 Labs before that. Any connection to Actavis?

18 A. Not that I'm aware of.

19 Q. So your indication in your report that
20 doctor -- or that Mr. Bitler was employed
21 continuously and in charge of quality continuously
22 from 1995 until 2008, that's another error?

23 A. It's a typographical error, yes.

24 Q. It's not a typographical error. You
25 actually comment as part of the basis for your

1 conclusions about the continuity of people in
2 leadership positions, and in particular of
3 quality.

4 A. Uh-huh.

5 Q. So you don't -- it's not just a
6 typographical error in this section. You rely on
7 the notion that Mr. Bitler was there for that
8 extended period of time as part of the basis for
9 your conclusion that Actavis's leadership somehow
10 had something to do with their quality systems
11 being deficient?

12 MR. MILLER: Object to the form.

13 THE WITNESS: If I'm not mistaken, he was
14 QA director in 2004. And we had the
15 pharmacist complaint in June of 2004. So he
16 was in that position when we had a
17 double-thick as the pharmacist tablet in
18 there.

19 So I don't see anything fundamentally
20 inconsistent with it other than a
21 typographical error.

22 BY MR. ANDERTON:

23 Q. He had the complaint in 2004 of a tablet
24 manufactured in 2003. Do you still not see
25 anything fundamentally different, Dr. Bliesner?

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1 MR. MILLER: Object to the form.

2 THE WITNESS: I don't have a record of
3 it, whether it was manufactured in 2003.

4 BY MR. ANDERTON:

5 Q. If the record reflects that it was
6 manufactured in 2003, Dan Bitler was not involved
7 in the quality system that -- that was in place
8 when it was manufactured, was he?

9 MR. MILLER: Object to the form.

10 THE WITNESS: That particular case, no.

11 BY MR. ANDERTON:

12 Q. Okay.

13 A. However, subsequently, with the
14 difficulties that arose in 2007, 2008, he was in
15 charge.

16 Q. Again, an error in your report to say
17 that Dan Bitler was in charge of quality from 1995
18 to 2008?

19 A. It's a typographical error, yes.

20 Q. I show you a document that's been marked
21 as Plaintiff's Exhibit 16. Have you seen that
22 document before, Dr. Bliesner?

23 And I'll shortcut for you. Turn to page 30 --
24 I'm sorry, 45 of your report.

25 A. I see.

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1 Q. Now, in paragraph 39 of your report, on
2 page 16, you discuss this investigation. Will you
3 turn to that page?

4 A. Which page was that?

5 Q. Page 16.

6 A. Okay.

7 Q. Do you see paragraph 39?

8 A. I do.

9 Q. You see in there where you, in the
10 third -- or, I'm sorry, the fourth sentence where
11 you indicate that the product was released to
12 market on 5 December 2007?

13 A. I do.

14 Q. Okay. And if you turn to your
15 declaration on page 4, again the third bullet
16 point, do you see where you say, "Following a
17 rapidly conducted visual inspection, the product
18 is released to market on December 5, 2007"?

19 A. I do.

20 Q. Okay. You looked at Plaintiff's Exhibit
21 16 before you prepared your report, correct?

22 A. Which report are we talking about?

23 Q. The only report that's out there,
24 Dr. Bliesner.

25 A. Sixteen.

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1 Q. Dr. Bliesner, I pointed you to the
2 precise reference. It's on page 45.

3 A. It's on page 45.

4 Q. You looked at it.

5 MR. MILLER: Object.

6 THE WITNESS: They don't have the same
7 numbers. So I'm just trying to make sure.

8 BY MR. ANDERTON:

9 Q. What number is different?

10 A. Okay. Got you.

11 Q. A32, Plaintiff's Exhibit 16.

12 A. Uh-huh.

13 Q. Now, my question: Did you look at
14 Plaintiff's Exhibit 16 before you prepared your
15 report?

16 A. According to what I've written in the
17 report, I looked at it as I was preparing the
18 report.

19 Q. Okay. And this is the investigation
20 record for the internal investigation into the
21 double-thick tablets that were manufactured.
22 That's a pretty significant document, isn't it?

23 A. I'm not sure I had this whole copy of
24 this whole document.

25 Q. Is there a reason to think that you

1 didn't?

2 A. I don't recognize the content in it.

3 Q. You offer very harsh criticism of the
4 investigation conducted by Actavis. Is it now
5 your testimony that you might have offered that
6 criticism without having the full investigation
7 report?

8 A. I'm not saying that.

9 Q. Well, which is it, Doctor?

10 A. I'd like to confirm, if I'm going to be
11 making statements on it, that I did have the whole
12 thing.

13 Q. If you had not had the whole thing,
14 wouldn't you have said to Plaintiff's counsel in
15 the MDL, I need the whole investigation report?

16 A. Not necessarily.

17 Q. Really?

18 A. No. Because sometimes --

19 Q. Go ahead.

20 A. Sometimes you can't tell whether you've
21 gotten the whole thing or not.

22 Q. This one has page numbers at the top.
23 One of 67, 2 of 67 all initialed by Dan Bitler.

24 A. Okay.

25 Q. You could easily have been able to tell

1 if you had the entire thing; correct?

2 A. Not necessarily. I've seen --

3 Q. You may continue.

4 A. I've seen bits and pieces of documents
5 that were provided to me that don't necessarily
6 reflect what was actually the whole document.

7 Q. You would have been able to tell by
8 looking at the page numbering --

9 A. Not necessarily. Could have had a first
10 draft or something like that, that didn't have the
11 page numbering on it. There's been all kinds of
12 different things that are going on with these
13 documents. I've got, for instance, I've got an
14 EIR that has a redaction in one, one copy and
15 another copy, it doesn't.

16 Q. Dr. Bliesner, you cite to this document
17 as the basis for portions of your expert report.
18 Are you now saying you don't have any idea whether
19 you reviewed the whole thing?

20 A. That's not what I'm saying at all.

21 Q. Well, what are you saying, Dr. Bliesner?

22 MR. MILLER: I object to the form of the
23 argument and the argumentative nature of the
24 way you're asking these questions. There's
25 absolutely no reason for it. And you have

1 done a good job of trying to bulldog him
2 around. I saw how you did it in the first
3 deposition you took of the man. I know that's
4 what you're trying to do now. But I object to
5 it. And I just want to make it clear that at
6 least from my perspective, all these questions
7 and the answers are subject to an
8 understanding of just how you're acting. It's
9 just the form of the whole thing is
10 unnecessary, and I object to it.

11 BY MR. ANDERTON:

12 Q. Dr. Bliesner, what are you saying? I
13 can't tell what you're saying.

14 A. What I'm saying is that this document I
15 have in front of me, I'm not sure if it's exactly
16 the full copy that I reviewed. That's what I'm
17 saying.

18 Q. How would you determine that, as we sit
19 here today, on September 19th --

20 A. Okay.

21 Q. -- how would you know?

22 A. I can go over here or to this folder and
23 pull out A32 and do a comparison and tell you
24 whether it's the same thing.

25 Q. Let's go off the record and you can do

1 that.

2 A. Okay.

3 THE VIDEOGRAPHER: It's 3:24. We're
4 going off the record.

5 (Discussion off the record.)

6 THE VIDEOGRAPHER: It is 3:28. We're on
7 the record.

8 BY MR. ANDERTON:

9 Q. Dr. Bliesner, we were off the record for
10 a moment, and you had the opportunity to review a
11 portion of your file and determine whether the
12 document that I've put in front of you as
13 Plaintiff's Exhibit 16 is something that you've
14 seen before.

15 A. It is.

16 Q. You've reviewed that document?

17 A. I have reviewed that document.

18 Q. You reviewed it before you prepared your
19 report?

20 A. While I was preparing the report.

21 Q. And it forms part of the basis for the
22 opinions set forth in your report, correct?

23 A. Part of the basis.

24 Q. And as I mentioned earlier --

25 A. It's a data point.

1 Q. Okay. As I mentioned earlier, that's
2 a -- double-thick tablets being manufactured is a
3 significant event in the context of this
4 litigation and your analysis; isn't that right?

5 A. Double thick tablets are the crux or
6 oversized tablets are the crux.

7 Q. Okay. You agree then that that's a
8 significant event with respect to your analysis;
9 am I right?

10 A. I would say it is supportive evidence of
11 the fact that they had problems manufacturing
12 them.

13 Q. Do you think it's a significant event or
14 not?

15 A. I don't know if I would use the term
16 significant or not, but it's an event. It's a
17 data point.

18 Q. Okay.

19 A. If it had been one time and no others,
20 it would just have been a single data point. So
21 it is an additional data point.

22 Q. Okay. If you look at the Plaintiff's
23 Exhibit 16, you know that when they conducted the
24 investigation into this batch, that they emptied
25 the entire batch onto trays and did a visual

1 inspection of the entire batch; right?

2 A. I'd have to read the report again. I
3 don't have total recall of all documentation I've
4 read by any stretch of the imagination. It's a
5 lot of stuff.

6 Q. Okay. Well, will you turn to page 57 of
7 67? I am referring to the handwritten notation in
8 the top right corner of Plaintiff's Exhibit 16.
9 So near the back.

10 MR. MILLER: Can you repeat that again?

11 MR. ANDERTON: 57 of 67.

12 BY MR. ANDERTON:

13 Q. It says packaging operation signature
14 sheet. Do you see that document?

15 A. I do see that, yes.

16 Q. Okay. Do you see the dates where the
17 folks who are initialing that are conducting the
18 inspection?

19 A. I do.

20 Q. What are they?

21 A. 1/15/08, 1/16/08, 1/17/07, 1/18/08.

22 Q. Turn back three pages to page 60. Well,
23 actually turn back to page 16 of 67. You see that
24 that reflects information collected during a
25 tightened AQL inspection of that batch?

1 A. I do see that.

2 Q. Do you remember enough from your review
3 to remember that there was a visual inspection and
4 then an additional tightened AQL inspection of
5 this batch?

6 A. I do recall that there was that.

7 Q. What date was that tightened AQL
8 inspection conducted?

9 A. If we go by the signature, it would
10 be --

11 Q. I'm looking at page 61, not 60. I'm
12 sorry. I directed you to 60 and then I pushed to
13 61. I apologize.

14 So now my question is, with respect -- and
15 looking at the information on page 61 of 67, what
16 dates was that tightened AQL -- what date was the
17 tightened AQL inspection for that particular?

18 A. All of these entries it looks are
19 1/22/08.

20 Q. January 22nd, 2008?

21 A. That's correct.

22 Q. So, they're finishing up the inspection
23 in the third week in January of 2008; right?

24 A. That's correct.

25 Q. Turn back to your report.

1 A. Uh-huh.

2 Q. Paragraph 39. Dr. Bliesner, paragraph
3 39, please.

4 A. I'm sorry.

5 Q. Page 16.

6 A. Yes.

7 Q. Where you say "Product was released to
8 market on 5 December 2007," that's not correct, is
9 it?

10 A. Based on A31 and 32, it's an incorrect
11 date.

12 Q. And then in your declaration, on page 4,
13 where Plaintiff's counsel in the MDL was kind
14 enough to make that even stronger for you, it
15 says, "Following a rapidly conducted visual
16 inspection, the product is released to market on
17 December 5, 2007." Did I read that correctly?

18 A. Which bullet are we talking about?

19 Q. The third one on page 4.

20 A. Okay. Got you.

21 Q. The fourth sentence reads, "Following a
22 rapidly conducted visual inspection, the product
23 is released to market on December 5, 2007."

24 A. That's what it says.

25 Q. That's not correct, is it?

1 A. It is not.

2 Q. Another error.

3 How do you make a mistake like that,
4 Dr. Bliesner?

5 A. How do you make a mistake like that?
6 When you're reviewing thousands and thousands and
7 thousands of documents that have -- pages of
8 documents that have no lineage or connection to
9 it, it's very easy to get a date messed up.
10 That's how you mess it up.

11 And then the basis for the report, errors are
12 propagated and goes into a summary like this.
13 That's how it happens.

14 Q. Too much information for you to review?

15 MR. MILLER: Object to the form.

16 MR. ANDERTON: I mean, is that my take
17 away from that response?

18 MR. MILLER: Object to the form. You
19 know, that is more than argumentative. Go
20 ahead and answer it.

21 THE WITNESS: Not as I see it.

22 BY MR. ANDERTON:

23 Q. And so that we're clear, Dr. Bliesner,
24 that's not just making a mistake about a date.
25 That's an affirmative statement about when the

1 product was released to market.

2 A. It's a mistake on the date.

3 Q. On when the product was released to
4 market.

5 A. It's a mistake on the date.

6 Q. Okay. You're willing to tell the Court
7 in sworn testimony that it was rapidly released to
8 market on December 5 when, in fact, it wasn't
9 until late January?

10 A. It's a mistake on the date.

11 Q. Dr. Bliesner -- let's take a quick
12 break, catch your breath.

13 THE VIDEOGRAPHER: It is 3:36. We're
14 going off the record.

15 (Discussion off the record.)

16 THE VIDEOGRAPHER: It's 3:45. We're on
17 the record. This is tape number 6.

18 BY MR. ANDERTON:

19 Q. Dr. Bliesner, will you turn to paragraph
20 44 of your report, please?

21 A. Yes.

22 Q. Page 18, you see that it refers to the
23 Digitek recall?

24 A. Yes.

25 Q. And then with respect to your affidavit,

1 on the top of page 5, you have a bunch of these,
2 but I can tell you that that is the seventeenth
3 bullet point, the very top one there.

4 A. Got you.

5 Q. Out of 22 total. I'm going to read
6 that. Do you see that in the declaration on page
7 5 it says, "On April 24, 2008 a Class One
8 nationwide recall of all Digitek tablets
9 manufactured by Actavis is announced due to double
10 thickness tablets, overweight tablets, and/or
11 blending defects."

12 A. I do.

13 Q. Do you see that?

14 A. Uh-huh.

15 Q. Do you see that as the basis for that in
16 your declaration you cite to Plaintiff's Exhibit
17 113?

18 A. Got you.

19 Q. Do you see that?

20 A. Yes.

21 Q. In your report on page 18 at paragraph
22 44 when you reference the recall, you don't say
23 anything about blending defects, do you?

24 A. In the report here?

25 Q. Yeah.

1 A. No, I don't.

2 Q. And Plaintiff's Exhibit 113, which I'm
3 handing you, which is the basis for the bullet
4 point, the information in bullet point 17, have
5 you seen that document before?

6 A. I have.

7 Q. That document doesn't say anything about
8 blending defects, does it?

9 A. It does not.

10 Q. So when Plaintiff's counsel in the MDL
11 prepared this affidavit or this declaration for
12 you --

13 A. They didn't prepare it for me. We
14 worked on it together.

15 Q. Oh, so you're validating it?

16 A. No. It was a teleconference with my
17 input, as I said earlier in my deposition.

18 Q. Did you tell them to include blending
19 defects in that bullet point?

20 A. Not that I recall.

21 Q. But you signed it with that language in
22 there?

23 A. Yes, I did.

24 Q. So you didn't obviously compare that to
25 Plaintiff's Exhibit 113 before you did that, or

1 did you do that? Did you do that knowingly?

2 A. I compared to my A35. And this one,
3 which I'm not sure what it is.

4 Q. Which you're not sure what is?

5 A. What my A number would be on this.

6 Q. Well, that's referenced in your A35 as I
7 see it.

8 A. Okay.

9 Q. Again, that doesn't say anything about
10 blending defects, does it?

11 A. This one here? No.

12 Q. Nor does your A35, page 47.

13 A. Got you. No, it doesn't.

14 Q. Another error?

15 A. It looks like it is, yes.

16 Q. Dr. Bliesner, I just handed you a
17 document that has been marked previously as
18 Plaintiff's Exhibit 91. You've seen that document
19 before? And if you need to, you should look at
20 page 47, reference A37 of your report.

21 A. Which one did you say is A.?

22 Q. A37.

23 A. A37?

24 Q. Yes, sir.

25 A. Yes.

1 Q. You've seen that document?

2 A. Yes.

3 Q. In A37 at your report, you indicate that
4 the -- and this is at the beginning of page 47 and
5 continuing on to page 48, under description of
6 contents, you indicate, "This inspection was
7 conducted as a qualifying GMP inspection for the
8 new Riverview facility."

9 Did I read that correctly from your report?

10 A. Yes, which it says in the beginning of
11 the document. So...

12 Q. Beginning of Plaintiff's Exhibit 91?

13 A. Yes.

14 Q. Okay. So your report accurately
15 indicates that the reason for that inspection was
16 to conduct a qualifying GMP inspection for the new
17 Riverview facility?

18 A. That's how it started.

19 Q. So that's what -- why the FDA was
20 inspecting Actavis?

21 A. According to the FDA, yes. It was a
22 qualifying inspection to start with.

23 Q. Okay. The FDA knows --

24 A. Right.

25 Q. -- why they are inspecting Actavis,

1 right?

2 A. Yes.

3 Q. Okay. So as you wrote in your report,
4 and as you just said, according to the FDA, they
5 were inspecting Actavis because they were
6 conducting a qualifying GMP inspection for the
7 Riverview site; is that right?

8 A. That's a fair statement, yes.

9 Q. Okay. At page 4 of your declaration,
10 the very last bullet point -- and, again,
11 referring to the FDA inspection and referring to
12 attachment A37 which we were just reading from.

13 A. Uh-huh.

14 Q. You say in sworn testimony, "From March
15 to May of 2008, the FDA inspects Actavis's
16 facilities due to significant GMP deficiencies
17 relating to the prevention and remediation of
18 double-thick tablets and blending failures." Did
19 I read that correctly?

20 A. You did.

21 Q. That is not why the FDA conducted --

22 A. No.

23 Q. -- that inspection, is it?

24 A. It's clearly not. The findings that
25 came out of it.

1 Q. But you say --

2 A. It's what --

3 Q. -- due to significant --

4 A. It's an incorrect statement.

5 Q. Another incorrect statement?

6 MR. MILLER: Objection to the form. It's
7 just making a little speech there. It's not a
8 question.

9 THE WITNESS: As we talked about very
10 early on in the deposition, I pointed out that
11 I knew that there were errors in this report
12 after I -- the declaration, after I signed it.

13 BY MR. ANDERTON:

14 Q. Quite a few?

15 A. There are. There are. I wouldn't
16 classify it as quite a few, considering the volume
17 of documents that built up the original report to
18 go into this as a summary. There are errors. I,
19 I'm not going to say that there aren't.

20 Q. Does an analytical chemist inadvertently
21 characterize an assay value that is clearly within
22 specifications?

23 A. That question has no relevance to this
24 whatsoever. In an analytical chemistry
25 environment and in the pharmaceutical industry in

1 general, a document like this would have a second-
2 and a third-party review for content. All right?
3 Just like anything else around here, including
4 this report. And they don't, the way the system
5 is set up this legally.

6 So that comparison is totally inaccurate. You
7 can't do -- because there's errors in the written
8 document after a review of various other documents
9 that are all thrown together and handed out in
10 piecemeal fashion and say that's because you've --
11 somebody has got poor analytical skills. That's
12 just a total stretch, and I won't stand for that.

13 Q. It's kind of the same analysis you're
14 making to come to your overall conclusion.

15 A. Absolutely nothing whatsoever to do like
16 that. That's a mischaracterization.

17 Q. These are data points, Dr. Bliesner.
18 Each of these errors is a data point. At what
19 point do the conclusions in your report crumble
20 for the inaccurate data points?

21 A. Each of these data points has nothing to
22 do with the accuracy and the overall conclusion of
23 the report. There's a lack of compliance across
24 the board from the beginning. Products made it to
25 the market, and there's been a continuous lack and

1 failure of quality systems for many, many years.
2 The fact that I have individual errors within a
3 report or a declaration doesn't change those facts
4 at all. Not at all.

5 Q. How can we or the Court know that, how
6 can we rely on your conclusions when you're -- you
7 obviously don't pay attention to detail enough to
8 get these things accurate?

9 MR. MILLER: Object to the form.

10 THE WITNESS: I don't think that there's
11 any correlation between errors in a report and
12 the overall conclusion in the end.

13 MR. ANDERTON: The --

14 THE WITNESS: The major --

15 MR. ANDERTON: I'm sorry, Dr. Bliesner.
16 I didn't mean to talk over you.

17 THE WITNESS: The major facts here are
18 that there was a total failure of the quality
19 system. I don't think anybody can argue that
20 data. And in the end, product that was out of
21 specification, thick, thin or whatever, has
22 made it to the market from very early on,
23 probably as early as 2000 or something, all
24 the way up to the last batch that was made and
25 shipped out. I don't think you can argue with

1 that with the data.

2 So to characterize errors within a single
3 document that was done substantially after the
4 original document was made that actually in
5 the grand scheme of things, if you look at it,
6 has very few, is a total mischaracterization.
7 You can't make that extrapolation, in my
8 opinion.

9 BY MR. ANDERTON:

10 Q. Says nothing about your attention to
11 detail and reliability of your overall conclusion?

12 MR. MILLER: Object to the form.

13 THE WITNESS: No. And I don't appreciate
14 you characterizing me as having a lack of
15 detail, or attention to detail.

16 BY MR. ANDERTON:

17 Q. I'm just pointing out 8 or 10 what I can
18 only conclude are mischaracterizations in this
19 affidavit, in this declaration, that you signed
20 providing sworn testimony that I now have to deal
21 with as potentially -- because you might try to
22 give this testimony in this case.

23 Do you understand I have to address these?

24 A. I'm not saying that --

25 MR. MILLER: Object to the form. There

1 MR. MILLER: Oh, come on. Object to the
2 form.

3 BY MR. ANDERTON:

4 Q. But we don't have any proof that it
5 happened otherwise, Dr. Bliesner.

6 MR. MILLER: Object to the form. I think
7 you got about two minutes left.

8 BY MR. ANDERTON:

9 Q. Dr. Bliesner, in your declaration, you
10 indicate on page -- you indicate on page 9, the
11 obvious chance that -- well, you don't like the
12 inspection protocol that Actavis used, and you
13 indicate, "After the recall, Actavis did not test,
14 examine, or do anything to determine the magnitude
15 of their manufacturing problem of
16 out-of-specification Digitek tablets. They simply
17 stored the recalled product in a warehouse and
18 kept on producing Digitek."

19 Did you sign that declaration with that
20 statement in it?

21 A. I did.

22 Q. They didn't make any other Digitek after
23 the recall, did they?

24 A. They did not. That was my understanding
25 that they continued to produce. It's an error.

1 Q. Another error?

2 A. Yeah. Kind of like the QA document that
3 had a misspelling in it a few minutes ago.

4 MS. DONAHUE: Objection, move to strike.

5 MR. ANDERTON: Dr. Bliesner, I have no
6 further questions. Thank you for your time.

7 THE WITNESS: You're welcome.

8 MR. MILLER: We'll read it.

9 THE VIDEOGRAPHER: It is 5:13. We are
10 going off the record. This concludes the
11 deposition.

12 MR. ANDERTON: So, Phil, we're going to
13 mark this as the next exhibit, it looks like
14 it's 499. You're going to take it with you.
15 You're going to make a copy of it, and you're
16 going to return the original to Dr. Bliesner.
17 Then you're going to distribute a copy to me,
18 and you'll contact Mr. Miller, and he'll tell
19 you whether he wants a copy.

20 MR. MILLER: Let me ask you this
21 question. Does that mean it will come back on
22 a CD?

23 MR. ANDERTON: Some sort of media. It
24 won't be a hard copy, it will be a drive or
25 something.

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1 MR. MILLER: I'll take an electronic copy
2 just like you give Mr. Anderson.

3 (Whereupon, Defendants' Exhibit 499
4 was marked for identification)

5 (THEREUPON, the taking of the deposition was
concluded at 5:15 p.m.)

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